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Attorney for Coldwell Banker Itildo, Inc.
and Marsha Tomerlin

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

DAVID MENKEN, a single man, Plaintiff -
Appellant, v.

Plaintiff,

vs.

GERRY F. EMM, husband; MAXINE C.
EMM, wife; COLDWELL BANKER
ITILDO, INC., a foreign corporation;
MARSHA L. TOMERLIN,
wife; JOHN DOE TOMERLIN; DAVID J.
MORANDI, husband,
JANE DOE MORANDI, wife; SCARPELLO,
HUSS & OSHINSKI, LTD., a
Nevada Law Firm,

Defendants.

NO. CV 04-598 PHX MHM

**MOTION TO STRIKE PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND PARTIAL SUMMARY JUDGMENT**

(Assigned to the Honorable Mary H.
Murguia)

Plaintiff, by and through its counsel undersigned, hereby moves this Court to strike the
Plaintiff's Motion for Reconsideration and Partial Summary Judgment. This Motion is supported
by the following Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 20th day of February, 2009.

HAMMERMAN & HULTGREN, P.C.

/s/ Vincent M. Creta
Vincent M. Creta
3101 N. Central, Suite 500
Phoenix, Arizona 85012
Attorney for Coldwell Banker Itildo, Inc.
and Marsha L. Tomerlin

MEMORANDUM OF POINTS AND AUTHORITIES

The Plaintiff's Motion for Reconsideration and Partial Summary Judgment dated February 17, 2009, is untimely. Rule 7.2(g)(2) of the Local Rules requires parties to move for reconsideration no later than ten (10) days after the date of the subject Order. This Court's Summary Judgment ruling is dated December 12, 2008. In addition, the Court's dispositive motion deadline was September 19, 2008. The Plaintiff did not request or receive extensions of those deadlines.

Although this Court's Summary Judgment decision did not rely upon the Arizona Court of Appeals case, the Plaintiff will likely argue that, because the Court of Appeals Memorandum Decision arose more than ten (10) days after this Court's Summary Judgment decision, the ten day deadline in Rule 7.2(g)(2) should not apply. However, even if the Court interprets Rule 7.2(g)(2) as a ten day deadline from the date of the Court of Appeals' decision, that decision was rendered on January 1, 2009. Under any scenario, the Motion for Reconsideration and Partial Summary Judgment is untimely. Under Rule 7.2(m)(1), the Plaintiff's motion is prohibited by rule and court order and should be stricken.

DATED this 20th day of February, 2009.

HAMMERMAN & HULTGREN, P.C.

/s/ Vincent M. Creta
Vincent M. Creta
3101 N. Central, Suite 500
Phoenix, Arizona 85012
Attorney for Coldwell Banker Itildo, Inc.
and Marsha L. Tomerlin

1 **COPY** of the foregoing
electronically filed this
2 20th day of February, 2009, to:

3 Honorable Mary H. Murguia
Judge of the United States District Court
4 Sandra Day O'Connor U.S. Courthouse, Ste. 525
401 W. Washington Street, SPC 53
5 Phoenix, AZ 85003-2154

6 and copy emailed to:

7 Terrance J. Slominski, Esq.
SLOMINSKI & ASSOCIATES
8 7150 S.W. Hampton, Ste. 201
Tigard, OR 97223
9 Attorney for Plaintiff

10 /s/ Vincent M. Creta
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